

## LOEVY & LOEVY

311 N. Aberdeen St., 3rd Floor, Chicago, Illinois 60607

November 10, 2023

Via ECF

Hon. P. Kevin Castel  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, NY 10007

Re: *Edwin Crespo, et al., v. Joseph Franco, et al.*, Case No. 22-cv-07345-PKC –  
PRE-LETTER MOTION TO FILE SECOND AMENDED COMPLAINT

Judge Castel:

Plaintiffs, Edwin Crespo, Donte Smiley, Tony Serrano, Jose Santiago, Sidney Wray, and Anthony Washington, by and through their attorneys, Loevy & Loevy, respectfully submit this pre-letter motion to file a second amended complaint. The parties currently have an upcoming conference on Tuesday, November 21, 2023.

In support of this motion, Plaintiffs state as follows:

Pursuant to the Final Revisions to the Case Management Plan (Dkt. 73), Plaintiffs seek leave of this Court to file a Second Amended Complaint pursuant to Federal Rule of Civil Procedure 15(a)(2) (attached hereto as Exhibit 1). Plaintiffs have alleged that they were wrongfully convicted and have brought claims based on federal law against the City of New York and Defendant Officer Joseph Franco. *See generally* Dkt. 10. The case involves complex issues including a *Monell* claims against the City of New York (“City”), individual claims of damages pertaining to each of the six plaintiffs, and allegations of misconduct in six police investigations that took place between 2006-2015. *Id.*

Under Rule 15(a)(2), a district court should grant leave to amend “when justice so requires.” The rule encourages a “policy in favor of granting leave to amend.” *Jaser v. N.Y. Prop. Ins. Underwriting Ass’n*, 815 F.2d 240, 243 (2d Cir. 1987). Typically, a district court “has discretion to deny leave for good reason, including futility, bad faith, undue delay, or undue prejudice to the opposing party.” *Olaf Soot Design, LLC v. Daktronics, Inc.*, 299 F. Supp. 3d 395, 397 (S.D.N.Y. 2017). The most important factor is whether the non-moving party will be prejudiced by the altered pleading. 6 Fed. Prac. & Proc. Civ. § 1487 (3d ed.). Here, there is no risk of prejudice to Defendants. Plaintiffs’ amendment neither adds new parties nor new claims. It is brought within the limits imposed by the Case Management Plan. The information added is based in large part on documents produced by the parties during discovery.

To the extent the Court is inclined to deny the parties’ motion, the parties request a conference to present arguments to the Court about reasonable amendments to the complaint.

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Dated: November 10, 2023

Respectfully submitted,

/s/ Megan Porter

*One of Plaintiffs' Attorneys*

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**CERTIFICATE OF SERVICE**

I, Megan Porter, an attorney, hereby certify that on November 10, 2023, I filed the foregoing motion using the Court's CM/ECF system, which effected service on all counsel of record.

/s/ Megan Porter

*One of Plaintiffs' Attorneys*